O. Talukdars 43

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Office of the R.L.A

The question referred to the R.L.A. for consideration is whether the Talukdar of Bhamaria in Broach and Panch Mahals District is entitled to mines and minerals in his estate.

2. The point whether a talukdar possesses a right to the mines and minerals in his estate was fully considered by the R.L.A. in his opinion No. 3157 dated 23rd December 1908. After reviewing the history and the general nature of the Talukdari tenure the R.L.A. recorded the following conclusions in para. 18 of that opinion :-

I. All Talukdars can be divided into two classes
(A) those who hold under document evidencing a grant, and
(B) those who hold without such documents

II. The case of those under head A must be considered in the first instance with special reference to the terms of the grant.

III. Those under head (B) who are "Girasias" (such as the Talukdar of Metral) are now all on the same footing. They are absolute owners of the soil of their estates and have the rights to the minerals found in their estates.

IV. It is not impossible that there may be talukdars holding without documents

evidencing grants, whose history and nature of whose tenure may be such as to limit the rights.

V. It is therefore necessary to consider in each case

(1) Is there any document evidencing a grant ? If not

(2) Is the Talukdar such as is described in III above ?

(3) If not, what is the special nature of the tenure and how does it affect the rights to minerals ?

The Talukdar of Bhamaria in Broach and Panch Mahals District has no Sanad and his tenure is Bhogwat (i.e. according to past enjoyment). Consequently the test V(1) does not apply. It would, therefore, be necessary to consider whether the test V(2) applies, that is to-day, whether he is a Girasia such as the Thakore of Metral as laid down in the R.L.A's conclusion. III. That conclusion is based on the observations made by the R.L.A. in paras. 8,9,11 and 12 of his opinion. In para. 8 he observed : "The term Talukdar moreover is used to cover a large number of essentially different tenures, and so far as the present question is concerned the case of "Kasbati" is poles asunder from that of "Girasia" though both are covered by the definition of Talukdars in Act VII of 188. The Kasbati is a lessee who holds on a yearly lease ....." In para. 9 he observed: "There remains the Talukdar proper or Girasia as distinguished from Kasbati who does not hold under any grant and the Metral Taluka appears to be a typical example of

this tenure". In para. 11 he observes: "The Panch Mahals were ceded in 1860. The treaty itself casts no light on the rights of the Talukdars or Girassias under Scindia's Government but in the Bombay Gazette or their villages are styled proprietary villages and it is said that under British Management the position of large landlords, Talukdars and Thakors has been left unchanged. In 1877 Government in dealing with the Survey Settlement of nine talukdari villages (including Metral) say: "These 'talukdars' are mere leaseholders liable to the full assessment of their lands" but at a later date as noted by Mr. Brown in paragraph 2 of his letter No. 1523-7 Confl. dated 1st May 1908 Government appear to have resiled from this position, and in Government Resolution no. 8999 dated 15-11-1884 in speaking of the talukdari village of Godhra (of which Metral is one) they say the Talukdars have been recognised as full proprietors of the soil of their estates, the right of Government being confined to a charge on the rental." In para. 12 he observes: "As to the Talukdars of Broach and Kaira I have been unable to discover any specific pronouncement on the part of Government.

They of course like the Talukdars of Panch Mahals are unaffected by Act VI of 1862. The Special Acts ~~applicable~~ applicable to them (XIV of 1877 and XXI of 1881) cast no light on the question; but presumably the general considerations applicable to all Talukdars would apply equally to them." By the term "Girassiia" as used in conclusion No. III when considered in the light of his above quoted observations what the R.L.A. presumably meant was a Talukdar as distinguished from the Kasbati i.e. lessee. Both the terms "Girassia" and "Kasbati" are thus seen to be used by the R.L.A. in their tenurial signification. Consequently all considerations as to whether or not the Talukdar of Bhamaria was a Rajput or one holding a giras allowance are immaterial; and any enthonological explanation of the terms Girassia and Kasbati (both of which appear in Enthoven's "Tribes and Castes of Bombay") would tend to obscure the main issue namely whether the Talukdar of Bhamaria is from the tenurial point of view a proprietor of his talukdari estate as the Talukdar of Metral of is a mere Kesbati lessee. Dandekar in his Law of Land Tenures Vol. I at p. 360 observes : "In different parts of the Ahmedabad District, but especially in Dholka a body of men called Kasbatis or townsmen, the descendants of rich soldiers, has by lending money and acting as revenue securities raised themselves to be upper landlords or middlemen. Useful as a set off to Girasias, the Kasbatis had been treated

with much indulgence by the Gaikwar and some of them claimed the right of settling for the rental of the villages under their management About the year they had gained power over villages bringing them into cultivation stipulating that they should be allowed to lease them at fixed rent." In Secretary of State for India v. Bai Rajbai (13 B.L.R. 609) it was held by the Bombay High Court that "the tenure known as Kasbati in Viramgaum taluka is permanent (i.e. as opposed to temporary and not in the sense of perpetual); at the same time, it is not an unconditional holding and the British Government have the power to resume the villages in case any of the conditions imposed is not fulfilled." It appears therefore that a Kasbati is in the nature of a farmer of revenue having no property rights. There is no suggestion that the Thakore Bhamaria is a Kasbati. In his report No. 28 of 1896 the Assistant Supertintendent Gujarat Revenue Survey has stated that the tenure on which Thakore of Bhamaria has held estate seems to be precisely the same as that on which the Godhra Villages are held, that is Talukdari (see Selections from the records of the Bombay Government No. CCCLXII New Series) Metral is one of these Godhra villages. If so, there

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is no reason why the tenure of the Bhamaria Talukdari estate should not be considered to be similar to that of Metral. Applying the test laid down by the R.L.A. in his opinion of 1908 it appears that the talukdar of Bhamaria is a proprietor of his estate and consequently entitled to the mines and minerals in his estate.

Id/- PNM.

20/7.

Remembrancer of Legal Affairs.

U.R.to R.D.No. 4992 dated the 21st July 1943.

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Submitted.

2. Pl. see R.L.A.'s opinion No. 4992 dated 21st July 1943 Slip N (O.Talukdar's file). A(R) now refers to certain cases from Sind where the question of theproprietorship of oil found in the holdings of Sind Jahagirdars had been under considerarion of Sind Govt. He further observes as under :-

"While therefore I would agree to this case, although it rests on mere analogy without any evidence of document, I think it is all the more important not to issue any kind of general order, and to reserve the main issue for further consideration, if and when the time comes. R.L.A. might see this note before issue of orders." The file referred to by the A(R) has been put up by the R.D. along with the Sind Govt's decision thereon for R.L.A's perusal.

3. The reference made by the Sind Govt. was of general character (p.9 of R.D.file 2837/33) and the reply thereto of the Bombay Govt. was on the general lines. The Bombay Govt. stated that (p. 13, of R.D.file 2837)" in cases of alienated lands the right to minerals generally follows the terms of the grant on which the land is held." The general reply on thepoints raised by the Sind Govt. is of no value in determining

the rights of a Talukdar to the mines and minerals found in his talukdari estate for the following reasons :-

(1) The R.L.A. after very carefully studuing the history of the Gujrat Talukdars in his opinion No. 3157 dt. 23.12.1908 laid down certain tests for future guidance for determining the nature of the tenure and how it affects the rights to minerals. There is no document in the case under consideration evidencing a grant. The R.L.A. therefore after studying the history and nature of the Talukdari tenure came to the conclusion that the Talukdar of Bhamatta is a proprietor of his estate and consequently entitled to the mines and minerals in his estates.

(2) The question of ownership of the soil and sub-soil in the case of a talukdari land has been fully considered by the R.L.A. in paras. 3 and 13 of his opinion No. 3157 dated 23rd December 1908.

(3) At page 357 of Dandekar's Law of of Land Tenure, Vol. I, it is stated that the talukdari estates have never been in the hands of Govt. to transfer. In other words, the talukdars are not grantees. In para. 7 of R.L.A.'s opinion No. 3157 dt. 23-12-1908, it is observed that "the talukdar's rights have grown up in a manner entirely different from that of the ordinary alienee

who holds by virtue of a grant from the Crown. "So the right of Talukdars cannot be determined with reference to the broad general principles made applicable to inamdars or Jahagirdars who are grantees under the Crown.

4. As the R.L.A. is not requested to reconsider his opinion the papers may be seen and returned to R.D. after keeping copies of Sind Govt's letter and Bombay Govt's letter at pp. 9 and 13 respectively of R.D. file 2837/33 and of A(R)'s note at pp. 84-85 ante.

Sd/- K.J.Pathare
12/10

P.A.

Applying the test laid down in R.L.A's opinion No. 3157 dated 23rd December 1908, R.L.A. held that the Talukdar of Bhamaria being a proprietor of his estate was entitled to the mines and minerals in his estate (see R.L.A's opinion No. 4992 dated 21st July 1943). The R.D.office proposes that Govt. may agree with the said opinion of the R.L.A. and direct that the Thakore of Bhamaria is at liberty to exefcise these rights at his discretion. It further proposed that <u>no general orders need issue in respect of all Talukdari estates as each will have to be considered on its own merits</u>. Presumably it iswith reference to the last sentence of the R.D.office note of 6th August 1943 that A(R) makes the following remarks in para 2 of his minute dt. 13th August 1943:-

Office of the R.L.A.

Seen and returned.

Sd/- P.N.M.

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Remembrancer of Legal Affairs.

U.R.to R.D.No. 7214, dated 1st November 1943.

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